IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.456 OF 2002
IN
SUMMARY SUIT NO.1486 OF 2001

Manipal Finance Corpn.Ltd. ..Plaintiffs

Vs.

D.V.Talpatriwala ..Defendant

Ms.Soma Singh i/b Mr.Vivek Sharma for the plaintiffs

Ms.A.G.Dalal for the defendant no.3

None for defendant no.1 and 2

CORAM : S.U.KAMDAR, J
DATED : 13TH FEBRUARY, 2006

P.C.:

1. The present suit is filed in respect of a bill of exchange drawn and accepted by defendant no.1 and 2. Defendant no.3 in the present case is a guarantor and he has executed a deed of guarantee dt.23.6.99 which is Ex.F to the plaint. In so far as defendant no.1 and 2 are concerned, they are served. The learned counsel for the plaintiffs undertakes to file Affidavit of Service as well as compilation of documents within one week from today.

2. In so far as defendant no.1 and 2 are

concerned, though they are served no leave to defend is sought. Plaintiffs have informed me that the original advocate for defendant no.1 was appearing for all the three defendants. Thereafter the advocate took discharge and then the same advocate has filed Vakalatnama only for defendant no.3. In view of the fact that defendant no. 1 and 2 are duly served and inspite of service they nave not applied for any leave to defend by filing any reply to the summons for judgment, summons for Judgment is made absolute as against defendant no.1 and 2. Accordingly, there shall be decree as against defendant no.1 and 2 for the sum of Rs.37,74,445.14 with further interest @ 18% p.a. from the date of the suit till payment and / or realisation on the principal amount of Rs.28,95,000/-

3. In so far as defendant no.3 is concerned, the only defence is raised is that under para 11 and 12 of the plaint, plaintiffs agreed to recover money from defendant no.1 and 2 and thus, the defendant no.3 should be discharged from the guarantee.

4. There is no substance in the defence raised because there is no dispute that personal guarantee dt.23.6.99 has been executed by defendant no.3 and the guarantee is valid and subsisting. Para 11 and 12 of the plaint only shows that defendant no.1 and 2 has accepted the liability to pay and does not discharge defendant no.3 from his liability under the personal guarantee. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs. 30.0 Lacs within 4 weeks failing which plaintiffs will be entitled to decree as against defendant no.3 also. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within

four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.